IN THE HIGH COURT OF JUDICATURE AT PATNA
CR. WJC No.263 of 2008
VIJAY KUMAR GUPTAVS STATE & ORS
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3 28.8.2008 Heard learned counsel for the petitioner and learned Additional public prosecutor for the State of Bihar.

2 In the instant writ petition, the petitioner has prayed for a direction to the respondents to pay heavy compensation as he was detained for a period of two years and odd, over and above the sentence he was awarded under sections 379 and 411 of the penal code by the trial court, namely, Sub Divisional Judicial Magistrate, Bettiah, West Champaran.

3 Short facts giving rise to this writ petition are as follows:- On the written report of one Rabindra Jha dated 7.3.2002, Bettiah Town ps case no. 94 of 2002 was registered for offences under sections 341, 323, 379, 411, 384/34 of the penal code. The informant alleged that on 7.3.2002 while he was going to deposit a sum of Rs 1570/- collected from sale of attendance sheet of Bar Association, Bettiah, the accused petitioner and one unknown person snatched his money and a packet containing some forms. On halla, some lawyers and people present in the court premises chased and caught the petitioner with the cash and packet containing forms, whereas his accomplice managed to escape. In the process, petitioner also received some beatings. However, some advocates including the informant intervened and saved the petitioner from further assault. The accused petitioner was thereafter handed over to the police on the same day. The Bettiah Town Police Station after registering a formal FIR produced the petitioner on 8.3.2008 before the Magistrate, who remanded him to judicial custody.

4 Police after investigation submitted charge sheet for offences

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under sections 343, 323, 384, 411 of the penal code. After cognizance, charges were framed against the petitioner on 14.8.2004 for offences under sections 323, 341, 379, 411 and 384 of the penal code.

5 The first witness was examined on 3.6.2005, almost after three years two months of his remand. The prosecution examined two witnesses in total. The petitioner could not cross examine him, as no lawyer of Bettiah Bar was willing to appear for him and to come to his aid. The aforesaid witnesses proved the seizure of money, marked as exhibit 1, and packet containing attendance sheet, marked exhibit II. The trial court acquitted the petitioner of charges under sections 384 and 323 of the Penal code, but found him guilty of offences, under sections 379 and 411 of the penal code vide judgment dated 25.4.2007, passed in Tr No. 340 of 2007, GR No. 517 of 2002. The trial court sentenced the petitioner to undergo Rigorous imprisonment for three years, under section 379 of the penal code, and further imposed a fine of Rs.1000/-, and in default ordered further imprisonment for two months. The trial court also inflicted punishment of three years imprisonment under section 411 of the penal code. However, the trial court directed that both the punishments would run concurrently. The petitioner was ultimately released from the prison on 23.5.2007.

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6. The petitioner submits that the he was convicted only under sections 379 and 411 of the penal code, and sentenced to imprisonment of three years, under each count which were ordered to run concurrently. He submits that even if the petitioner did not pay a fine of Rs.1000/-, he would be liable to undergo further imprisonment of two months. Thus even as per judgment of the trial court, the petitioner could have been imprisoned for three years and two

months, at the maximum. The petitioner has remained in jail for five years, two months and fifteen days. In other words, he remained in custody for excess two years, over and above the period of sentence imposed upon him. He submits that the petitioner was entitled for release on bail, even under section 437(6) of the Code of Criminal Procedure. As per section 437 (6) of the Cr.P.C. if, in any case triable by a Magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the Magistrate, unless for reasons to be recorded in writing, the Magistrate otherwise directs.

7. The State has filed counter affidavit not controverting the aforesaid fact that petitioner remained in custody for 5 years 2 months and odd, against the maximum sentence of 3 years 2 months.

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8. The facts stated in this petition disclose very sorry state of affairs. A case for offences under sections 323, 384, 379 and 411 of the penal code lingered on, and trial could be concluded only after five years of its institution. The charge was framed under sections 323, 343, 379, 411 of the penal code on 28.8.2004.

9. In a well known case of Hussainara Khatoon and others vs. Home Secretary, State of Bihar, Patna, reported in AIR 1979 Supreme Court 1360 pages 1360 and 1890 in which a large number of under trial prisoners had remained in custody for more period, than they could have been convicted, even if the punishment could have been ordered to run consecutively. Para 2 of page 1819 of the judgment reads as follows:-

> " The under trial prisoners, who are accused of multiple offences and who have already been in jail for the maximum term for which they could be sentenced on conviction, even if the sentences

> awarded to them were consecutive and not concurrent, should not be allowed to continue to remain n jail for a moment longer, since such continuance of detention would be clearly violative not only of human dignity but also of their fundamental right under Article 21 of the Constitution."

In para 6 at page 1380 of the judgment above, the Apex court observed as :-

> "It is the constitutional right of every accused person who is unable to engage a lawyer and secure legal services on account of reasons such as poverty, indigence or incommunicado situation, to have free legal services provided to him by the State and the State is under a constitutional mandate to provide a lawyer to such accused person if the needs of justice so require. If free legal services are not provided to such an accused, the trial itself may run the risk of being vitiated as contravening Art. 21 and every State Government should try to avoid such a possible eventuality."

10 Thus, the Apex court in no uncertain terms criticized the callousness and indifference of the all concerned, who are responsible for such deprivation of right to life and liberty granted under Article 21 of Constitution. An unauthorized detention of a person is against realm of human dignity and continuance of such custody amounts to perpetration of injustice.

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11 In the case in hand, it would appear that the offence alleged was one triable by a Court of magistrate. None of the offence carried more than a maximum imprisonment of three years. The petitioner could not fight legal battles in the proceeding in the trial as no member of this noble profession of Bettiah Bar was willing to offer any legal assistance as he snatched money which was to be deposited in lawyer's fund. Many such accused like petitioner is undefended for reasons manifold like economic inability, ignorance of procedural law etc. Such pathetic case could not be of the petitioner alone, but many more, as have been found in the case of Hussainara Khatoon and others, noticed above. All concerned must immediately take notice of such cases, take

appropriate steps and make due reports to courts concerned so that persons involved in such cases, not being of very grave nature, may not go undefended. Section 437(6) of the Cr.P.C. provides that if, in any case triable by a magistrate, the trial of a person accused of any non-bailable offence is not concluded within a period of sixty days from the first date fixed for taking evidence in the case, such person shall, if he is in custody during the whole of the said period, be released on bail to the satisfaction of the magistrate, unless for reasons to be recorded in writing, the magistrate otherwise directs.

12 It is a common knowledge that when an accused is convicted and found guilty for two or more offences, the court generally orders that sentences to run concurrently in respect of all the offences. In the instant case, none of the charges carried a punishment higher than three years. In the circumstances, the learned Magistrate ought to have considered extending privilege of bail to the petitioner under section 437(6) of the Cr.P.C., provided he was willing to furnish the bail bond or the bailors indicated therein.

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13. This section does provide onus also on the accused to move the court for grant of bail in such circumstances. However, where a person does not have any lawyer to defend him since the inception of case, the learned Magistrate should consider this aspect and pass appropriate order under the provisions as and when it is applicable. In such circumstances the role of the public prosecutor assumes significance. The Public prosecutors are required to perform their duties fairly, independently, impartially protecting human dignity as has been observed in UN Guidelines on role of prosecutor. In case of Harry Bergen vs USA, reported in (1934) 295 US 78-79:79 L.ED 1314, His lordship Justice Sutherland observed that US attorney is the representative not of an

ordinary party to a controversy, but of a sovereignty, whose obligation to govern impartially is as compelling, as its obligation to govern. The role of P.P. has been perceived by Indian courts, as minister of Justice. They are not to seek conviction at all cost, nor is he/her duty to act as an avenging angel for vengeance. In my view responsibility is cast upon Public Prosecutor/Addl Public Prosecutor or one representing State in such circumstances to also bring to the notice of the court that an accused has remained in custody for more period than what he can have been in custody under the offence carrying maximum punishment.

14. This takes us to the next issue whether the petitioner is entitled to any monetary compensation. Before I examine the issue it would be expedient to notice some of decisions of the Apex court in this context. In case of Rudal Sah Vs. State of Bihar, reported in 1983 SC 1086 the Hon'ble Supreme Court observed that courts can pass order for payment of money as compensation, consequent upon deprivation of Fundamental Right of a person. The Apex court held that keeping a person in prison for a long period, even after acquittal is a glaring fact of deprivation of Right to Liberty guaranteed by Article 21 of the Constitution, and as such victim is entitled to monetary compensation as his right to be set at liberty, which is a fundamental right, has been infringed. In case of Bhim Singh Vs .the State of Jammu and Kashmir, reported in 1986 SC 494, the Supreme Court was considering a case of illegal detention in police custody for four to five days. In this case, the Supreme Court observed that illegal detention of petitioner Bhim Singh in police custody, constitutes violation of Articles 21 and 22 of the Constitution of India and ordered for payment of Rs.50,000/- by way of monetary compensation.

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15. Detention of a prisoner in custody in excess of the period that he has been sentenced, impinges upon his fundamental right to life and liberty, as such, he is entitled to monetary compensation. The petitioner was sentenced to imprisonment for three years two months, at the maximum inclusive of default in lieu of payment of fine, by judgment dated 3.5.2007 of trial court, by which time he had already remained in custody for more than five years and two months, being in prison continuously since 8.3.2002. Both the prosecuting authority and the court remained oblivious of his continuous detention for more than a period, the sentence for any of the offence would have carried. The petitioner has been deprived of his Right to liberty. The excess detention of two years and odd contravenes fundamental right guaranteed under Article 21 of the Constitution. A liberty lost cannot be effectively compensated. The monetary compensation awarded previously only gives some solace to the aggrieved person. Even at a meager estimate, petitioner would have earned a sum of Rs.12,000/- per annum even at the rate of Rs.1000/- per month. In the aforesaid circumstances, I direct the respondent no.1, the State of Bihar to pay compensation which is quantified at Rs.24,000/- (twenty four thousand) as well as High Court Legal Services Committee to pay a sum of Rs.1,000/- (one thousand) to the petitioner.

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Shashi. **(Samarendra Pratap Singh,J).**